UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1135
9 April 1992

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1135th MEETING

Held at Headquarters, New York,
on Wednesday, 1 April 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Peru (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Peru (continued) (CCPR/C/51/Add.4)

1. At the invitation of the Chairman, Ms. Vargas and Mr. Lázaro (Peru) took places at the Committee table.

Right to life, recognition as a person before the law, liberty and security of the person, prohibition of slavery and servitude, treatment of prisoners and other detainees (arts. 6, 7, 8, 9, 10, 11 and 16) (Section II of the list of issues) (continued)

2. Mrs. HIGGINS said, with reference to article 9 of the Covenant, that it was her understanding that some 75 per cent of the prison population of Peru was made up of people who had not yet been tried, but had been placed in prison while awaiting trial owing to a shortage of police cells. Among their number were several hundred female prisoners, with over 100 dependent children, who lived as permanent residents in the prison system. The individuals in question had been found guilty of nothing. In practice there was a rolling derogation in effect with regard to article 9, given which she asked whether it was the view of the Government that there was no need in practice to take account of the provisions of article 9.

3. Mr. PRADO VALLEJO said that Decree Law 46 authorized detention by the armed forces on their own authority of any citizen. The Decree Law also provided that a judge could petition for the handing over of any such detainee. He asked what happened to detainees where no such petition was made, and what remedies would be available to a person in that position.

4. Mr. LAZARO (Peru), responding to points raised by the Committee, referred to Directive No. 01-CCFFAA-JICS, cited by Amnesty International in its report, Peru: Human Rights in a Climate of Terror. The Directive, in the words of Amnesty International, comprised a set of orders on the conduct of counter-insurgency operations, and permitted troops to carry out killings without trace, and instructed them not to take prisoners; the report went on to say that the Minister of Defence, while admitting the existence of the document, had claimed it was the work of an unnamed officer acting in error, and that it had not been approved by the Armed Forces Joint Command.

5. He reiterated that the Directive did not constitute government policy, and was not part of the legislative corpus of the State. The comment in the Amnesty International report that irrespective of its status, the document reflected what occurred in practice, strained all logic.

(Mr. Lázaro, Peru)

6. With regard to enforced recruitment, the only party guilty was Shining Path, which frequently obliged miners to join its ranks. The phenomenon of rural patrols should be seen in that context. The legal framework for such patrols was provided by Act No. 24571 of 1984, and in some urban areas, including Lima, there was considerable interest in forming comparable urban patrols for protection on a block-by-block basis.

7. Ms. VARGAS (Peru) said that the rights of the unborn child were protected by article 2 of the Political Constitution. Abortion was punishable under the Penal Code, and induced delivery was permissible only on the recommendation of a panel of doctors. Efforts to modify the legislation governing abortion had so far not resulted in any changes. Statistics relating to the question of abortions would be provided to the Committee in due course.

8. The issue of military service was governed by the Compulsory Military Service Act, which provided for military training for all eligible men and women. Not all those notified were called upon to do active service, since there was a selection procedure in which some were disqualified. It was possible for recruits with appropriate backgrounds to aspire to the non-commissioned officer and officer categories.

9. Mr. LAZARO (Peru) noted that there had recently been a decline in the number of disappearances. Nevertheless any such occurrences were a cause of concern to the Government.

10. It had been claimed that Government death squads were operating since killings had taken place in areas supposedly controlled by the armed forces, in which movement was not possible without their knowledge. In fact, the Government was concerned by the phenomenon and was conducting investigations. Evidence of the Government's intent was offered by Decree Law 665, which authorized investigating prosecutors to enter any place of detention to investigate reports of disappeared persons. Red Cross officials could also be authorized to gather information relating to such cases. In an effort to prevent abuses, a special Senate commission on violence and pacification had been established and was drafting amendments to Act No. 24150, governing the state of emergency. Amendment of the Act would clearly re-establish the pre-eminence of civilian authority in zones covered by the state of emergency. The Government was seeking to expedite approval of the amendments. Such action indicated the Government's concern to protect human rights and fulfil its international obligations. The Government was aware that the elimination of terrorism required more than legislative norms to suppress acts of terrorism, and entailed action in various other areas, including re-education.

11. Ms. VARGAS (Peru) said that the Government understood the need to increase awareness among the members of the armed forces and police, as well as among the population at large, of the provisions of the Covenant. With

(Ms. Vargas, Peru)

regard to the role of the Attorney-General, she said that it was his function to defend the people, where necessary, against the Administration. Decree Law 665 increased his authority to enter into any place of detention to ensure that the rights of detainees were safeguarded.

12. Mr. LAZARO (Peru) said that the Government was attempting to remedy that shortcoming in prison facilities. The current budget appropriations contained funding for a new facility in the north of the country. Efforts were also being made to improve basic facilities such as meals. Those advances would be continued in a further effort to improve conditions.

13. Ms. VARGAS (Peru) said that the Ministry of Justice had recently ordered the removal of all children of more than three years of age from prison institutions.

14. Mrs. HIGGINS said that it was deeply disturbing that the State's response to the presence in prison of children of mothers awaiting trial was to remove those children from their mothers. Mothers who had not been sentenced for any offence should simply not be in prison.

15. Mr. PRADO VALLEJO noted that Supreme Decree 171-90-PCM stated that all military personnel in emergency zones were deemed to be on active duty 24 hours a day. That meant that military courts had jurisdiction over everything that happened, which raised the danger that even unofficial acts committed by such individuals would be excluded from civil jurisdiction.

16. Mr. LAZARO (Peru) said, concerning section II (h) of the list of issues, that, according to article 234 of Decree-Law 23214 of the Military Penal Code, military jurisdiction also covered ordinary offences committed by military persons while they were on duty and that such offenders should be subject to the norms of the penal code currently in effect.

Right to a fair trial (arts. 14 and 15 of the Covenant) (sect. III of the list of issues)

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, and right to participate in the conduct of public affairs (arts. 12, 13, 17, 18, 19, 20, 21, 22 and 25 of the Covenant) (sect. IV of the list of issues)

17. The CHAIRMAN read out Section III of the list of issues concerning the second periodic report of Peru, namely: (a) information on guarantees for the independence and impartiality of the Judiciary and measures adopted to prevent intimidation of the members of the Judiciary; (b) information on legal and administrative provisions governing tenure, dismissal and disciplining of members of the Judiciary; (c) information concerning the organization and functioning of the Bar in Peru and on the availability of defence counsel in criminal cases; and (d) whether there were any special courts.

(The Chairman)

18. He then read out section IV of the list of issues, namely: (a) information concerning grounds for the expulsion of an alien (para. 57 of the report); (b) procedures existed for the legal recognition and authorization of various religious denominations and whether the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; (c) limitations, if any, on freedom of the press and mass media in accordance with the law; (d) clarification of the statement in paragraph 35 of the report that, "in most cases, shutdowns, strikes or similar work stoppages have been settled through ordinary legal procedures"; and (e) further details on the restrictions on the right to vote imposed on members of the armed forces and the police (para. 98 of the report).

19. Ms. VARGAS (Peru), referring to section III (a), said that the independence and impartiality of judges was guaranteed by article 232 and the following articles of the Constitution, which established that the power of the Judiciary was exclusive and could not be supplanted by any other power. Article 1 of Decree-Law 667 established the basic principle of the administration of justice and article 2 of that Decree-Law stipulated that the judiciary had full economic, political, administrative and disciplinary autonomy.

20. With reference to section III (b), article 98 of Decree-Law 777 established a general office for the monitoring of the Judiciary as the supreme authority for investigating any aspect of the conduct of the Judiciary, including verifying that magistrates acted in accordance with their competence and investigating complaints against them. A range of sanctions and disciplinary measures were established by article 209 of that law, including suspension, dismissal and the levying of fines.

21. Turning to section III (c), she noted that under article 2 of the Constitution, any detained person had the right to be advised by and communicate with a lawyer. Article 289 of Decree-Law 667 established the Bar in Peru as the social arm of the Judiciary. All persons were entitled to representation by the lawyer of their choice, provided he had the proper legal qualifications and was properly registered. Under the Ministry of Justice, there was a system of free legal advisers operative throughout Peru.

22. With reference to section III (d), she said that the only courts in Peru were those subordinate to the Judiciary and those in the system of military justice.

23. Turning to section IV (a), she said that the Constitution established the right of any citizen freely to choose his place of residence, to move through and to leave the territory, except where such movement was prohibited for reasons of public health. No person could be expelled from his place of residence except by special mandate or by application of the Aliens' Act. The expulsion of aliens was justified only in cases where they were dangerous, had previously been expelled from the country, had entered Peru surreptitiously or

(Ms. Vargas, Peru)

were engaged in sedition or other illicit acts contrary to public security or order. A new law on aliens was contained in Decree-Law 703.

24. With reference to section IV (b), she said that there were no procedures in the Peruvian legal system for the recognition and authorization of different religious denominations and noted that article 2.3 of the Constitution established freedom of conscience and religion and that the public exercise of all religions was free provided it did not disturb public order. No preferential treatment, consequently, was accorded to the Roman Catholic Church.

25. Mr. LAZARO (Peru) said that the equality enjoyed by the different religious denominations in Peru was reflected in the composition of the Peace Council, whose members represented a wide range of different religious beliefs and denominations.

26. Ms. VARGAS (Peru), turning to section IV (c), said that article 2.4 of the Constitution established the freedom of information, opinion, expression and the diffusion of ideas through words, writing or image, without prior authorization, censorship or impediment of any kind. Crimes committed through published materials and other mass media were detailed in the Penal Code and dealt with in the ordinary courts. Any limitation on freedom of expression was considered a crime. There was, therefore, no legal bar to the freedom of the press and communication, although all such activities were subject to liability under the law of Peru.

27. Concerning section IV (d), she said that the right to strike was established in article 55 of the Constitution. Labour union activities fell within the competence of the Ministry of Labour, which engaged intermediaries to see common ground in disputes and endeavoured to exercise tolerance in dealing with workers' grievances. Workers concluded collective bargaining agreements, which established their rights and obligations and were renewed on an annual basis.

28. With reference to section IV (e), article 67 of the Constitution stated that members of the armed forces and police on active duty could not vote or stand for election. It was the function of the armed forces and the security forces to guarantee the independence, sovereignty and territorial integrity of the Republic.

29. Mr. ANDO, speaking with reference to section III (a), asked for further clarification of the statement in paragraph 60 of the periodic report that courts could deliberate in private but voting was public.

30. With reference to III (d), he asked whether the delegation could elaborate on the jurisdiction of the military courts, particularly in the emergency zones.

(Mr. Ando)

31. Turning to section IV (c), he noted that, to date, not much information had been furnished on the issue of limitations on freedom of the press and mass media and wondered if more detailed information could be included in Peru's next periodic report.

32. With reference to the issue of trade union rights, raised in section IV (d), he asked which limitations, if any, there were on those rights in the areas under emergency measures.

33. Mr. MAVROMMATIS noted that the phrasing of section III (a) and (b) of the list of issues might have given the impression that the security of tenure and safeguards in respect of disciplinary action were not part and parcel of the independence of the judiciary, when in fact they were the classical forms of guaranteeing such independence. That might account for the brevity of Peru's response to that issue, and he wondered if further information could be given on the appointment of judges and on their deliberative procedures. Clarification was also required on the question of security of tenure.

34. Also with reference to article 14 of the Covenant, he asked which of the guarantees established by that article had been suspended or derogated from as a result of the emergency.

35. Turning to section III (d), he sought further clarification on the nature and composition of the military courts. Information was also required on their appeal and review procedures and on such issues as whether the courts of second instance were also military courts, whether they could use constitutional processes and who could appear before them. He wondered whether legal counsel in such proceedings had to be military personnel and what jurisdiction they had in respect of civilians or military personnel acting outside the line of duty in the commission of offences against civilians.

36. Turning to section IV (d), the Committee had received information that in August 1991 some of the collective agreements, both in the public and the private sectors, had been abrogated by decree, presumably under the emergency powers, and the collective bargaining process suspended. He wondered how the emergency powers could be invoked to abrogate existing agreements and whether there was compensation for those who suffered losses through such abrogation.

37. Finally, with reference to article 12 of the Covenant, he said that derogation from human rights was a frequent occurrence in countries where states of emergency had been declared and he wondered, in the case of Peru, whether such derogations involved the forced displacement of people.

38. Mr. MÜLLERSON said, with reference to section III of the list of issues, that the delegation had referred earlier to dismissal as one of the disciplinary measures that could be applied against judges and he asked for further clarification on who could dismiss judges and under what conditions.

(Mr. Müllerson)

39. On the same section, he asked for further clarification on the division of jurisdiction between military and civilian courts in cases where military personnel were concerned, such as disappearances and allegations of torture.

40. Turning to section IV (e), with reference to article 25 of the Covenant, he pointed out that if the military was legally or constitutionally alienated from political life, it might be tempted to resort to anti-constitutional means and he wondered whether that possibility had been considered by the Peruvian authorities.

41. Mr. AGUILAR, speaking with reference to section III (a) and (b), agreed with Mr. Mavrommatis on the need to clarify how the independence of the judiciary and the impartiality of judges were guaranteed.

42. With reference to the delegation's answer to section III (c), concerning the system of free legal advice available in the Peruvian system, he wondered how the requirement under law to provide legal representation could be reconciled with the attested shortage of lawyers in the country. He also wondered how, in a centralized system like that of Peru, the Bar functioned with respect to districts and whether there was any territorial restriction on lawyers.

43. With reference to the military courts, mentioned under section III (d), clarification was required on cases where civilians could be subject to military jurisdiction and on the specific laws which applied to military courts. It appeared that the Penal Code was not applicable to those courts and, consequently, the perpetrators of certain crimes enjoyed a kind of impunity.

44. The reference in paragraph 60 of the report to considerations of national security was slightly disturbing and more information was required on the interpretation of that term. He also noted with concern the observation by Amnesty International in its report on Peru, that decisions by the Supreme Council of Military Justice could not be appealed against since such decisions were, therefore, in violation of the country's own Constitution.

45. With reference to section IV (a), he pointed out that article 231 (a) of the Constitution in fact stated that the penalty of exile could not be imposed under any circumstances. He wondered, therefore, if there were de facto exiles in areas close to military activities and, in general, how the population in such areas was protected.

46. Finally, with reference to article 14 of the Covenant, he noted a decision by the Supreme Court of Justice of Peru that it would receive resolutions from international bodies such as the Committee on Human Rights and would decide on their implementation in accordance with prevailing domestic norms and procedures. By virtue of that exceptional ruling, the Covenant was rendered constitutional in Peru and the Committee was, therefore,

(Mr. Aguilar)

a Peruvian court and its decisions enforceable in accordance with the norms on the execution of sentences.

47. Referring to paragraph 57 of the report, he would welcome further information on the nature of the acts deemed by the Aliens' Act to contravene the law, morals, decency and the security of the State.

48. There was some doubt as to whether the provisions of Decree-Laws Nos. 733, 746 and 762 were compatible with those of article 19 of the Covenant, concerning freedom of opinion. Specifically, he wished to know what was the Government's opinion on the officially stated position of the Department of State of the United States of America that the conditions for freedom of the press in Peru were adverse, particularly for journalists. Under Decree-Law No. 736, for example, the author of an article critical of the State could apparently be tried for treason, even if the article was published in the foreign press. He would appreciate clarification of that question.

49. Decree-Law No. 746 required individuals to provide information to the recently established State Intelligence Bureau. He wished to know more about the Bureau's precise role, how it operated and what sanctions were prescribed for individuals who refused to provide information.

50. Turning to paragraph 98 of the report, he noted that the denial of voting rights to the military could reinforce the perception that the armed forces were outside the democratic process. Such isolation, together with training that led the military to believe that it was not part of the civil society, had contributed to the creation of a parallel society whose conduct was often in conflict with the human rights aims of the civil society. The Committee would like to know what the Government was doing to reconcile the two societies.

51. Mr. SERRANO CALDERA sought clarification as to the relationship between the military and civilian jurisdictions, the criteria used to determine whether a case came under military jurisdiction and which laws applied in such instances, the Penal code or special laws applied? He also asked whether the state of emergency meant the suspension of the principle of the exclusivity and unity of the jurisdictional function, as provided for under the Covenant, and whether the legal process provided for appeal against the rulings of military courts in the Supreme Court or in some other instance. He also wished to know before which body could individuals effectively bring urgent actions for amparo or habeas corpus.

52. Mr. WENNERGREN, referring to the right to privacy provided for in article 17 of the Covenant and reaffirmed in the Constitution of Peru, asked whether there were derogations from the inviolability of communications during states of emergency and, if so, whether such derogations included communications by telephone, telegraph and cable. He wondered which penal

(Mr. Wennergren)

provisions had put into effect the prohibition against violating the privacy of communications and whether such provisions were absolute or permitted exceptions. The relevant legislation seemed to contain no express prohibition against the use of hidden microphones, for example, or electronic devices for interfering with communications. He would like to know if phone-tapping was permissible during a state of emergency, and whether and to what extent phones had been tapped.

53. Turning to the question of freedom of expression, he noted that the freedom to express opinions was guaranteed under the Constitution. It seemed to him that the prohibition against expressing an opinion critical of the State would restrict that constitutionally protected right. Moreover, he wondered whether that prohibition extended to those in power, such as the national president and other authorities.

54. Lastly, he would welcome more information on the State Intelligence Bureau and its functions. It would be interesting to know if it was meant to protect State secrets and to operate as a censorship bureau in which case it would be likely to impede the search for information allowed under constitutional provisions guaranteeing freedom of information.

55. Mrs. HIGGINS, noting that the Constitution of Peru provided that the annual budget of the judicial branch should be 2 per cent of that of the central Government, asked what was being done to adhere to that provision in light of information that over the previous 10 years actual expenditures had not matched the amounts required to be budgeted. It was widely felt that such underpayment of judges made them susceptible to bribery.

56. Referring to article 17 of the Covenant, she recalled that a recent congressional committee had found that telephone taps had been placed on union leaders, candidates for office and reporters, and asked what the Government's response had been and what action it had taken.

57. Finally, she would welcome clarification of the provisions of the recent presidential decree which authorized certain powers of censorship in the interest of national security and permitted access by the armed forces to the universities.

58. Mr. PRADO VALLEJO, while recognizing the constructive initiatives taken by the Government of Peru, such as its proposal to cut military expenditure by 50 per cent - the resulting savings from which could be applied to the judiciary - expressed concern over the general situation of human rights in the country. Military courts seemed to have assumed control of all jurisdictions and had been far from rigorous in punishing human rights violations committed by the armed forces. The impunity of the armed forces had been noted in a recent report by the Special Rapporteur of the Working Group on Enforced Disappearances of the United Nations Commission on Human Rights. The armed forces seemed to be beyond the control of the civilian Government. Nevertheless, some way must be found to put an end to that situation.

(Mr. Prado Vallejo)

59. He expressed concern at allegations that military courts were presided over by career officers with no legal training and that proceedings were conducted in secret and asked if there was any substance to those allegations?

60. Referring specifically to an incident which had occurred in the district of Ayacucho in October 1986, in which seven persons detained by an armed forces patrol had been executed. He noted that although the High Command of the armed forces had acknowledged the facts, the accused had been exonerated on the grounds that the events had occurred in the exercise of their functions. Indeed, Amnesty International had stated that it was unaware of a single case in which a member of the Peruvian armed forces had been judged guilty of violating human rights. He wished to know how the military tribunals operated and what procedures were followed.

61. Finally, with respect to the right to strike, during the previous few months five decree-laws had suspended the free collective bargaining rights of workers. He would welcome, in particular, more information on the decree-law enacted in November 1991, whose effect seemed to have been to impose restrictions on the right to strike.

62. Ms. VARGAS (Peru), referring to the question of lay judges, said that they were called upon to deal with minor cases and misdemeanours only. There were very few lawyers in Lima, only about 18,500. Jurisdiction was on the basis that each department of Peru was a judicial district. Lawyers were all members of the Peruvian federation of bar associations.

63. With regard to the question whether a civilian could be subject to military jurisdiction, the answer was no. Civilians were subject only to civilian jurisdiction.

64. Decree-law 746 creating the national intelligence system had been repealed by the Congress, as had Decree-law 736, which dealt with the laundering of money.

65. Replying to Mrs. Higgins' question on the budget for the judicial branch, she stated that as of 1991 it had been increased to the 2 per cent of the central Government's budget as required by the Constitution. The salary paid to a member of the Superior Court was approximately $1,000 per month.

66. With regard to access by the armed forces to university premises, the relevant decree-law had been repealed as not in keeping with university autonomy.

67. Communications continued to be inviolable during states of emergency. Wiretapping was not allowed in Peru. While there had been some instances of wiretapping, the practice had been stopped.

(Ms. Vargas, Peru)

68. She emphasized that it was not a crime to express an opinion critical of the Government and that freedom of opinion was guaranteed by the Peruvian Government. Referring to the question regarding appeal from the sentences of military courts, she read out portions of articles 622, 623, 624 and 627 of the Code of Military Justice, which stated essentially that appeal was possible in cases where the accused was convicted or acquitted of offences punishable by death, internment, imprisonment or discharge, and also in cases where the board of military justice did not agree with the judge advocate. Appeals could also be made against stays of proceedings, decisions on jurisdiction or evidence, and sentences. When appeal was denied, the accused could still make use of the "queja" or complaint procedure.

69. The remedies of habeas corpus and amparo could be sought before any judge, who was obliged to consider them. With respect to the question concerning the fate of a law declared unconstitutional by the Court of Constitutional Guarantees, she stated that such a law was ipso facto abrogated.

70. On the question of appointment of judges: the National Judges' Council submitted lists of three names to the President of the Republic, who made the final appointment.

71. With regard to the question as to whether any guarantees relating to the administration of justice had been abrogated during states of emergency, she repeated that only the right guaranteed under article 31 of the Constitution had been abrogated, and that guarantees relating to the administration of justice had not been affected.

72. Mr. LAZARO (Peru) said that in case of conflicts of jurisdiction between civilian and military tribunals, it was the function of the Supreme Court to settle the matter.

73. With regard to the political status of members of the armed forces, those on active service did not have the vote. Upon their retirement they regained the right to vote and to stand for elective office, or even the presidency. They could become ministers, and many former military men were in fact senators.

74. Freedom of the press was unrestricted in Peru. All political and ideological points of view were represented in weekly and daily papers in the country, and were entirely free to express even opinions highly critical of the Government. The same was true of radio and television. As a matter of fact, certain political affairs programmes had first brought to light some of the incidents currently being reviewed by the Committee, and had led to their investigation.

75. It had been stated that Amnesty International knew of no case where a member of the military had been held responsible for excesses. In fact,

(Mr. Lázaro, Peru)

between August 1990 and July 1991, 37 officers and men had been punished for human rights violations, and from 1989 to 1991 70 trials had been held for similar violations. The first steps had therefore been taken towards dealing in a systematic way with human rights offences.

76. Ms. VARGAS (Peru), referring to the question on the body assigned to investigate judges and the judicial branch, said that there was an office attached to the Supreme Court known as the Internal Control Office which was charged with investigating the functional conduct of judges. With regard to the jurisdiction of the judicial branch, she stated that there were superior courts in every departmental capital and one Supreme Court for the whole republic.

77. Mr. PRADO VALLEJO asked what was the scope of Decree-Law 733 establishing the human and material resources for the disposition of the armed forces.

78. He also requested additional information on Decree-Law 732, which provided that whoever revealed or published any information on the national security service would be accused of secret activities; and on freedom of expression, as it was known that newspaper editors had been detained under the anti-terrorism law, including two editors of El Diario. He would also like to know what sentences had been imposed under that law.

79. Mr. LAZARO (Peru) said that Decree-Law 733 on general mobilization was under study, as was Decree-Law 762. The latter had been categorically denounced by almost all sectors affected by it and there was little doubt that it, too, would be repealed.

80. With respect to the two directors of newspapers supposedly being held under the anti-terrorism law, he replied that no newspaper directors were being held under such a law. If the reference was specifically to the two directors of El Diario, he advised the expert that they were unofficial leaders of Shining Path, and noted that they were being held for the offence of advocacy of terrorism. He quoted from article 319, chapter 2, of the Penal Code, to the effect that whoever provoked or maintained a climate of anxiety, alarm or terror among the people by carrying out violent actions against the life, health, freedom or property of citizens, or against public property, was guilty of very grave crimes punishable by imprisonment of no less than 10 years.

81. Ms. VARGAS (Peru) said that exile was not envisaged by Peruvian legislation even under states of emergency, as was expressly stated in article 231 of the Constitution.

The meeting rose at 6.10 p.m.

UNITED NATIONS

I CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1136
9 April 1992

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1136th MEETING

Held at Headquarters, New York,
on Thursday, 2 April 1992, at 10 a.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Peru (continued)

Third periodic report of Colombia

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Peru (continued) (CCPR/C/51/Add.4)

1. At the invitation of the Chairman, Mr. Lazaro and Ms. Vargas (Peru) took places at the Committee table.

2. The CHAIRMAN said that sections V and VI of the list of issues would be considered together.

Non-discrimination, equality of the sexes before the law and protection of family and children (articles 2 (1), 3, 23, 24 and 26) (section V of the list of issues)

Rights of persons belonging to minorities (article 27) (section VI of the list of issues)

3. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Peru, namely: (a) the effectiveness of measures designed to promote full equality between men and women, including relevant statistical data concerning the participation of women in the political and economic life of the country; (b) treatment of aliens, and in what respects, other than the exercise of political rights, their rights were restricted as compared with those of citizens; (c) information on the law and practice relating to the employment of minors; and (d) the law and practice with respect to remuneration for work performed by men and women under the same conditions.

4. He read out the list of issues pertaining to section VI, namely: (a) additional information concerning legislation adopted to give effect to articles 34, 35 and 169 of the Constitution, as well as relevant practices, including concrete examples; (b) any factors and difficulties hampering the implementation and enjoyment of rights under article 27 of the Covenant, including the situation of indigenous people in areas experiencing problems of production and trade in drugs; and (c) measures taken to ensure effective participation by minority groups in the political process and information on minority representation in Congress.

5. Ms. VARGAS (Peru), referring to section V of the list of issues, said that the Constitution of Peru did not allow any discrimination on the basis of sex. Peruvian women had made great strides in recent years and their economic, political and social status had improved. The relevant statistics showed that government policies had had a positive impact on political participation by women.

(Ms. Vargas, Peru)

6. Aliens were unable to hold land or property along the country's borders and could not buy property in border provinces. In addition, the higher ranks of the military were not open to aliens. In general terms, there were some limits to the political rights of aliens when national security was threatened.

7. As to the protection of minors, a 1968 law protected minors in the workplace. The Ministries of Labour and of Health and other agencies provided services for minors. In compliance with international instruments, minors could not work in industry. The minimum age for agricultural and non-industrial work was 14; for fishery work, 16; and for harbour and maritime work, 18. Children 13 and 14 years old could not work more than six hours a day, or a total of 36 hours a week, with a two-hour rest period during the working day. For those 14 through 18 years of age, the working day must not exceed eight hours, or 45 hours a week. The Government was aware, however, that economic and social conditions forced many youth to work under illegal conditions. The Government was making innovations in the Code on Minors and establishing agencies to protect working minors. An ad hoc commission was currently reviewing the legislation in that area.

8. The Constitution provided for just remuneration under the same conditions for men and women, without distinction.

9. Turning to section VI of the list of issues, she said that article 161 of the Constitution, which was the basis for legislation on peasant and indigenous communities, recognized the legal existence and capacity of such communities. They were autonomous in their administrative organization, community work and use of land. The Government respected their traditions and promoted their business ventures and cooperatives. The land of indigenous peoples could not be seized, nor could ownership of the land be transferred.

10. Mr. LAZARO (Peru) said that Peru's constitutional provisions in respect of indigenous peoples also informed his Government's foreign policy. For example, Peru was seeking to promote the development of indigenous peoples in the context of its cooperation with other countries of the Amazon region. His Government recognized the value of the traditional lore and practices of the indigenous communities for the promotion of sustainable growth and supported the establishment of mechanisms for preserving traditional know-how and technologies and securing payment for their commercial use. In order to raise the living standards of the indigenous peoples, there was a need to encourage alternative means of production and strengthen national institutions for promoting the development of indigenous communities. Together with other countries of the Amazon region, Peru was endeavouring to gain acceptance for such policies in the Preparatory Committee for the United Nations Conference on Environment and Development.

11. Ms. VARGAS (Peru), said that geographical and political factors had hampered the integration and economic and social development of indigenous communities. The impact of terrorism and drug trafficking on those

(Ms. Vargas, Peru)

communities was growing more serious. Government policy aimed at ensuring minority participation had fallen short of expectations and as a result additional activiites had been undertaken by the Ministry of Education and the army with a view to bringing indigenous and peasant populations into the mainstream of society.

12. Mr. SADI said that he would like more details on the percentage of women serving in government departments, the legislature and the judiciary. With regard to the protection of the family and children, he would welcome information on child prostitution and the situation with regard to trafficking in women and children. He inquired about the extent of the drug abuse problem in Peru, and whether any headway was being made in combating it. On the subject of minorities, it would be useful to know if any affirmative action programmes existed, establishing minimum targets for minorities in various positions. He requested clarification of the Government's environmental protection policy, especially as it was applied to areas inhabited by indigenous people, and whether those areas were experiencing any problems with industrialization.

13. Mr. FODOR said that, with regard to employment of minors, he understood that the law prohibited child labour for those under 14 years of age, but a 1987 report had stated that in practice more than 1 million children under the age of 14 were employed. The delegation should provide any more recent statistics available and should clarify any progress made over the past five years. He wondered if reports of children working in the Madre de Dios gold mines under conditions approaching slavery were correct, and if so, whether the Government was in a position to remedy the situation.

14. Mr. PRADO VALLEJO, referring to section VI (b), said that indigenous peoples were in a difficult situation, with the Shining Path on one side supporting drug producers, and on the other, the army and the police, which severely punished them. He wondered if the Government could provide indigenous peasant communities with any assistance, and whether any effort had been made among the peasant population to substitute other agricultural crops for coca. More information on government programmes and policies would be welcome.

15. Mr. HERNDL said that, with regard to the protection of minorities, the constitutional provisions giving them legal identity were very progressive. It would be interesting to receive statistics on what the Government had done to improve the cultural situation of minorities. Articles 34 and 35 of the Constitution provided for primary education in indigenous languages. He would like to know how that provision affected the issue of integration into the life of the country and access of minorities to public office.

16. Mr. LAZARO (Peru), in response to a question by Mr. Prado Vallejo, said that the government strategy to combat drug trafficking included the situation of indigenous communities in coca-growing regions. One of the prime

(Mr. Lázaro, Peru)

objectives was to enable those communities to enter into negotiations with businesses interested in investing in other crops. The local communities were legally entitled to enter into contracts with both domestic and foreign companies. Peasant communities could also organize politically, which was a part of the memorandum of understanding recently signed with the United States, as well as the Government Alternative development strategy.

17. In response to Mr. Sadi, he said that the drug problem in Peru was mainly related to supply, and it was agreed that responsibility for solving that problem should be shared between producers and consumers. International Narcotics Control Board statistics showed, however, that Peru was among the countries least affected by drug consumption.

18. With regard to protection of street children, several voluntary programmes had recently begun to provide them shelter and food. Those programmes were supported mainly by voluntary contributions, but also received funds from the Government and municipalities. The Government had also undertaken an ambitious project to establish a foundation that would work for the welfare of all the children of Peru. Among the aims of the foundation would be to provide minors employed legally with education and job training in the hope of improving their situation.

19. Affirmative action as such did not exist in Peru. Rather, efforts were focused on ensuring equal access for all citizens in every sphere without distinction.

20. Mr. Herndl had inquired about the participation of indigenous communities and ethnic groups in the life of the country. All groups were totally free to maintain their language and tradition, and the Government accorded them full respect. However, the spread of modern culture often caused dislocations in traditional communities, but that was not the result of any government policy. The rights of indigenous peoples were protected under the Treaty for Amazonian Cooperation and the States of the region had worked together to prepare for the United Nations Conference on Environment and Development. An indigenous person would be among those representing Peru at that conference.

21. Ms. VARGAS (Peru), in answer to Mr. Sadi's question on environmental protection measures, said that the new Penal Code contained a chapter on crimes against the environment and public health. It was one of the few such codes to include provisions of that nature.

22. As to the percentage of women in government posts, there was currently one minister (four in the previous administration), and some 15 to 20 women in the Chamber of Deputies and the Senate. As part of the process of regionalization that was under way in Peru it was expected that all minorities would be better represented in the new regional assemblies and councils that were being established.

23. Mr. LAZARO (Peru), replying to Mr. Fodor's question concerning child labour in the Madre de Dios gold mines, said that child labour had indeed existed at one time, although it had never amounted to slavery; however, the practice had since been abolished.

24. In view of the numerous concerns expressed by the members of the Committee with regard to the observance of civil and political rights, he suggested that it might be appropriate for his Government to submit, within a period of not more than 15 to 20 days, an addendum to the report, addressing in greater detail the areas of concern. He also proposed that the Committee should postpone its observations and recommendations until its July 1992 session, which would be attended by a Peruvian delegation.

25. The CHAIRMAN, supported by Mr. PRADO VALLEJO, Mr. SERRANO CALDERA, Mr. MAVROMMATIS, Mr. MULLERSON and Mr. HERNDL, welcomed the Peruvian representative's suggestion, provided that the Government could furnish the additional information within the specified period.

26. Mr. WENNERGREN said that, while he, too, supported the proposal, he wondered whether the Peruvian delegation might not need to consult the summary records of the past few meetings of the Committee; if so, it would be unable to meet the deadline of 15 to 20 days.

27. The CHAIRMAN said that the summary records in English would be available within one week. If he heard no objection, he would take it that the Committee wished to postpone its final observations, both the individual observations and those of the Committee as a whole, on the second periodic report of Peru until its next session.

28. It was so decided.

29. Mr. Lazaro and Ms. Vargas (Peru) withdrew.

The meeting was suspended at 11.10 a.m. and resumed at 11.25 a.m.

Third periodic report of Colombia (CCPR/C/64/Add.3)

30. At the invitation of the Chairman, Mr. Melo and Mr. Cepeda (Colombia) took places at the Committee table.

31. Mr. MELO (Colombia) said that much had changed in his country since the presentation of its second periodic report in 1988. At that time, his Government had been in the process of developing a new policy on human rights; most of the recommendations made in that area at the time had been put into practice. Further substantial changes had taken place since the submission of the third periodic report in January 1992.

(Mr. Melo, Colombia)

32. The situation in his country was paradoxical. For the past 20 to 25 years, Colombia had enjoyed one of the highest levels of economic development in Latin America. Its achievements in the area of social policy had been singled out in a recent United Nations Human Development Report. For example, the illiteracy rate had been reduced from approximately 40 per cent in the 1950s to 12 per cent currently. Women and men had equal access to primary, secondary and higher education; 48 per cent of university students were female and there were many women teachers. In the past 20 years, the fertility rate had decreased from an average of seven children per woman to two children, while the birth rate had been reduced from 3.5 per cent to 2 per cent.

33. At the same time, however, those achievements had been offset by a pervasive climate of violence. For 40 years, Colombia had been plagued by a guerrilla movement which had used social and economic disparities as justification for its actions and had also claimed to defend human rights. In addition, the State faced an extraordinary challenge from terrorist groups associated with drug traffickers, which had brought the judicial system to the brink of collapse.

34. In the past four years, Colombia had been making efforts to overcome those difficulties, the main thrust of which had been the development of an integrated policy on human rights, taking into account the various constitutional, legal, institutional, educational and cultural aspects. One of the most central issues, relating to the Constitution, had been addressed through the 1991 constitutional reform, which had been promulgated by an elected Constituent Assembly representing the entire nation. Another major issue, that of the impunity with which certain groups had been operating, was being dealt with through a Government initiative to introduce an adversary system. The problem of impunity had seriously affected the situation of human rights, because it had caused citizens to lose faith in the State's capacity to defend them from guerrilla attacks; accordingly, some individuals, occasionally with the complicity of government officials, had formed "self-defence" or paramilitary groups which had launched extermination campaigns against persons suspected of belonging to the guerrilla movement. At the time of Colombia's second periodic report, the country had been enduring a wave of murders and massacres perpetrated by such groups; the victims had usually been civilians.

35. Since then, substantial reforms had been introduced with a view to protecting human rights. A bill of rights had been adopted; the Constitution had been amended to reflect the country's multicultural character and to grant full equality to indigenous or cultural minorities. As a result, indigenous groups, which made up 2 per cent of the country's population, had three representatives out of a total of 100 members of the Senate. Furthermore, his Government had recognized the right of indigenous people to approximately 25 per cent of the national territory, mainly in the Amazon region; the Constitution declared that right to be inalienable. By protecting the rights of indigenous people, the Government was not only guaranteeing the survival of

(Mr. Melo, Colombia)

their culture, but was also slowing the process of settlement and destruction of the environment in the regions where indigenous communities were located.

36. The judicial system was being transformed rapidly. A new office, that of the Fiscalía de la República, had been created and had begun to function; a new legal remedy, tutela, had been introduced; the post of Parliamentary Commissioner or ombudsman had been created and filled; and other measures of a similar nature had been adopted. A national strategy to combat violence was being implemented by civilian authorities, and Colombia was currently the only country in South America to have a cabinet made up entirely of civilians.

37. In July 1991, his Government had lifted the state of siege which had been in effect for seven years. At the same time, measures had been adopted to strengthen the security forces and the judicial system, through increased protection of judges and witnesses. In order to address the grave problem of disappearances, procedures had been instituted for the immediate follow-up of reports of disappearances and the conduct of investigations.

38. The fact that the Minister of Defence was a civilian was of special importance for the control of the police force. The police were now fully under civilian authority, without any relationship to the military. The secret police were also, for the first time in many years, under civilian authority.

39. Taken together, those measures had begun to bear fruit. Complaints of torture and disappearances had dramatically decreased, as had assassinations of political figures. Both results had been achieved despite a certain level of continuing violence and a temporary increase in guerrilla activities.

40. Another aspect of the plan to combat violence was the peace initiative. His Government was proposing a negotiated settlement of the conflict with the guerrilla movement. In large part, that had already been achieved; members of the four guerrilla groups which had signed a truce with the Government in late 1990 and early 1991 had taken part in the Constituent Assembly of 1991. His Government had pursued negotiations with those guerrilla groups which had continued to fight and had modified its initial terms, making clear its willingness to accept international supervision of the agreements, as well as the participation in the dialogue of intermediaries from the private sector.

41. Furthermore, in order to cope with the long-term effects of the pervasive climate of violence, his Government had developed various educational programmes on human rights. The Constitution provided that all levels of the armed forces must receive education in human rights and the norms of international humanitarian law, and that such norms must prevail at all times, even under a state of emergency.

(Mr. Melo, Colombia)

42. Most of the proposals adopted by his Government had originated in recommendations made by United Nations working groups or special rapporteurs who had visited Colombia. Their role in the national effort to overcome the climate of violence and infringements of human rights was very important and had been welcomed by his Government.

43. Mr. CEPEDA (Colombia) said that prior to the recent constitutional reform, factors such as drug trafficking, violence and poverty, and institutional difficulties in addressing those issues, had led to a serious loss of institutional legitimacy. In 1988, the President of the Republic had proposed the holding of a plebiscite on constitutional reform. Despite widespread public support for that initiative, it had not been immediately adopted because of the fear that some members of Congress with ties to drug traffickers would use the proposed reforms to weaken the administration of justice. In March 1990, on the occasion of a mayoral election, a spontaneous plebiscite organized by student groups had reflected overwhelming popular demand for the convening of a Constituent Assembly. The President of the Republic had then used emergency powers to conduct a formal survey of public opinion on the question in May 1990. Thus the state of siege, which had been criticized as a restriction of freedom, had been used to promote democratic change.

44. Following agreement with the major political forces, including the guerrilla group M-19, the Constituent Assembly had been convened. Its members had been elected on the basis of a single national election district, which had given indigenous groups and other minorities an opportunity for representation. The State had provided financing for all political parties and had given them access to the media. The result had been a pluralistic Constituent Assembly representing all sectors and political forces. The new Constitution, promulgated by the Constituent Assembly in July 1991, had increased the State's capacity to deal with drug traffickers, so that the state of siege could be lifted.

45. The new Constitution had strengthened institutional legitimacy and had discredited political violence. He drew attention to an additional document provided by his delegation which described in detail all the constitutional changes affecting human rights.

46. All the rights provided for in the Covenant were protected by the new Constitution. Indeed, in many cases the Covenant had served as a source for the Constitution and particular importance had been given to human rights protection. There was a need for effective legal machinery to implement them and the new Constitution provided that machinery. All citizens had access to any judge in the country to request protection of any fundamental constitutional right which had been threatened or violated by the actions of the public authorities or individuals, and a ruling must be given within 10 days. The newly established Constitutional Court was vigilant in enforcing protection of human rights and had already dealt with many cases.

(Mr. Cepeda, Colombia)

47. A new system had also been established for dealing with emergency situations. Instead of a state of siege, provision now existed for declaring a state of domestic disturbance, which could only be imposed if clearly defined circumstances existed and the normal powers available were insufficient. The powers of the President in such situations were to be defined in a law adopted by Congress, which was also empowered to derogate from presidential decrees issued during a state of disturbance. States of disturbance could be imposed only for a 90-day period and any extension required the prior approval of the Senate.

48. However, despite the continuing violence in the country, it was improbable that recourse to such measures would be necessary. The climate in Colombia had changed and authority was exercised by the regular branches of government, as provided for in the Constitution. There were also provisions prohibiting the trial of civilians by military tribunals and the suspension of human rights and fundamental freedoms during states of domestic disturbance. A series of measures were being introduced to protect social and economic rights.

49. There had also been fundamental changes in the electoral system and the Senate now included representatives from all segments of society, including indigenous communities. Efforts were being made to encourage direct participation by citizens through the use of referendums and the introduction of democratic procedures in trade unions, universities, companies and political parties. The new Constitution sought to promote participatory democracy and provide greater territorial autonomy by encouraging regional and local democracy.

50. In short, Colombia had undergone rapid and unprecedented change in the course of the previous year. A peaceful revolution had taken place, affecting all areas of public life. A major effort was required by the Government to implement the constitutional changes, but many of the necessary instruments were already in place and provisions on local democracy and democratic participation were currently being discussed by Congress.

Constitutional and legal framework within which the Covenant is implemented (articles 2 (2) and (3) and 4 of the Covenant) (section I of the list of issues)

51. The CHAIRMAN read out section I of the list of issues concerning the third periodic report of Colombia, namely: (a) effects of the new Constitution on the status of the Covenant within the legal system; (b) practical consequences of the lifting of the state of siege; (c) rights derogated from during successive states of siege and the basis under the new Constitution for ensuring conformity with article 4 (2) of the Covenant in time of emergency; (d) information on impact of guerrilla warfare and drug trafficking on efforts to comply with the provisions of the Covenant, with particular reference to the rights of judges and journalists; (e) measures to

combat "death squads", paramilitary groups and private militia; and (f) follow-up action in response to views concerning Colombia adopted by the Committee under the Optional Protocol.

52. Mr. CEPEDA (Colombia), referring to section I (a), said that the new Constitution incorporated all the rights laid down in the Covenant. Indeed, in some areas it had sought to go further, while new mechanisms had been established to ensure rapid and effective compliance with human rights provisions.

53. Referring to section I (b), he said that new provisions had now been introduced to deal with states of emergency. He noted that the state of siege had been used to induce members of armed groups to return to civilian pursuits by authorizing their participation in the elections to the Constituent Assembly. It had also been used to provide protection from intimidation and threats for judges and witnesses involved in drug-trafficking trials. A special autonomous jurisdiction had been established for that purpose with a system of confidentiality to protect the identity of judges and witnesses. Measures had been adopted to strengthen the administration of justice and the Constituent Assembly had sought to give continuity to those measures through its special legislative committee, which included representation from all segments of society, including indigenous communities and groups such as M-19.

54. Referring to section I (c), he said that in 1990 the Supreme Court had found some of the decrees promulgated during the state of siege to be unconstitutional. Measures had been taken to restrict trade union freedoms in order to guarantee public services during a strike and prevent action by trade union activists who supported guerrilla groups. However, the restrictions in question had been rapidly lifted and in any case had subsequently been declared constitutional by the Supreme Court.

55. Under the new Constitution, the state of siege provisions no longer existed and the suspension of human rights or fundamental freedoms during a state of emergency was now prohibited. The Government had submitted a bill to Congress introducing judicial and political control over any efforts to restrict human rights provisions, which could be limited under exceptional circumstances but not suspended.

56. Mr. MELO (Colombia), referring to section I (d) and (e), said that guerrilla activities directed against the civilian population posed very complex human rights and public order problems, particularly as they were mainly confined to rural areas in which the State could maintain only a limited presence. Guerrilla warfare frequently led to retaliation by civilians, who were entitled by law to form armed groups under military protection for the purpose of self-defence. However, that was a dangerous provision, since many such groups had become independent of the State and were attempting to tackle guerrilla forces directly, especially in areas where drug trafficking was prevalent.

(Mr. Melo, Colombia)

57. The main forms of guerrilla activities were protection rackets and kidnapping for ransom. Beginning in 1989, measures had been adopted to attempt to deal with the impact of those activities on human rights. However, traditional land-owners were selling out because of guerrilla activity and being replaced by new owners experienced in armed warfare and with vast resources at their disposal from the international drug trade, enabling them to equip themselves with weapons more sophisticated than those possessed by the police or security forces. Negotiations with the guerrillas had helped reduce their direct participation in drug trafficking and had curbed retaliatory action against those suspected of ties with guerrilla groups. Some groups had handed over their weapons, while others had simply disbanded.

58. It had been decided to abolish penalties for those accused of membership of armed self-defence groups declared illegal by the Government, provided that they had not committed other crimes. That measure was helping to lessen the impact of such groups' activities. It was true that the security forces had been prohibited from making arrests when not in military uniform, but it was difficult to monitor illegal retaliatory actions by members of police and security forces. In any case, he did not feel that there was any close connection between those two issues.

59. Referring to section I (f), he said that the communications in question referred in large part to situations which had now been overtaken by the new constitutional changes. Some of the communications referred to detention procedures, which were now being radically revised. Under the new Constitution administrative detention was no longer allowed and all detainees had to be brought before a judge with 36 hours. He did not have specific information on hand on individual cases, but further details could be provided in due course.

60. Mr. AGUILAR said that, in view of his personal acquaintance with one of the members of the Colombian delegation, he would not take part in the discussion.

61. Mr. SADI requested clarification on the status of the Covenant within the Colombian legal system. Paragraph 37 of the report indicated that the Covenant had been incorporated into Colombian law, while the first sentence of paragraph 38 implied that efforts were still being made to bring constitutional procedures more into line with the terms of the Covenant.

62. He welcomed the fact that Colombia was considering ratification of the Protocol I Additional to the Geneva Conventions of 1949, and he inquired whether Colombia had ratified the Protocol or whether it was still being dealt with by the Senate. He also wished to know Colombia's position regarding Protocol II Additional to the Geneva Conventions of 1949.

63. Mr. MAVROMMATIS wished to know why the new Constitution did not prohibit discrimination on the grounds of colour, religion or property.

(Mr. Mavrommatis)

64. A number of factors exacerbated the socio-economic and political situation in Colombia. Colombia had a very large army whose structure and institutions were to a great extent independent of civilian control. While it was understandable that the current situation called for a strong army, Colombia should review the status of its armed forces and military institutions. Moreover, it was important to ensure the independence of investigations and the effective follow-up of alleged human rights violations.

65. He expressed concern about the de facto and de jure impunity of armed forces and the police. In his opinion, members of the armed forces accused of committing excesses should be tried in a civilian court. Moreover, according to article 91 of the Constitution, obedience to an order given by a superior could constitute a defence if the order had been given and carried out in the line of duty. In that regard, Colombian law lagged far beyond international standards.

66. Mr. SERRANO CALDERA said that Colombia was beset with a number of social, economic and political problems that had been compounded by the relatively new phenomenon of drug trafficking. Drug trafficking was an international phenomenon that affected all countries which produced, supplied, processed and consumed narcotic substances. There was therefore a need for international efforts and legal instruments to control that phenomenon. Both producer and consumer countries must establish appropriate mechanisms to punish and, in particular, prevent drug trafficking.

67. The third periodic report and the Colombian delegation's presentation gave the impression that Colombia had adopted a comprehensive structural plan designed to deal with problems that could not be solved by repressive or punitive measures. Colombia had established mechanisms for combating such problems as guerrilla warfare, drug trafficking, social disintegration and possible corruption. That coherent comprehensive approach provided Colombian society with the appropriate legal, economic and social institutions for promoting stability and development.

68. The Colombian delegation should explain the status of the Covenant as an autonomous legal instrument in Colombian legislation, indicating what place it occupied in the hierarchy of legal norms. He wondered whether a violation of the Covenant could be appealed before the ordinary courts. He also wished to know whether the Covenant had the status of constitutional or ordinary law, or some other status. If the Covenant had the status of constitutional law, was it possible to institute proceedings when it was felt that a provision of the Constitution violated one of the human rights guaranteed in the Covenant? He wondered whether any citizen could institute such proceedings or whether certain qualifications had to be met before a person could appeal to the Constitutional Court. Could a complaint of a violation of a provision of the Constitution be brought before a civilian or criminal court, or could such a violation be invoked only in the Constitutional Court? If the first hypothesis was correct, he wished to know whether the trial was suspended or

(Mr. Serrano Caldera)

whether the proceedings continued until the Constitutional Court took cognizance of the specific case. Finally, he inquired whether the Constitutional Court could strike down a law that it had found to be unconstitutional or if it simply declared its inapplicability in specific cases brought before it.

The meeting rose at 1.05 p.m.